

## Guiding questions for defining the normative content of the issues examined at the twelfth session

### Focus area 1: Contribution of older persons to sustainable development

#### About Community Legal Centres Australia

Community Legal Centres Australia<sup>1</sup> (CLCs Australia) is the national representative voice for the community legal sector in Australia. It has ECOSOC Special Consultative Status with the United Nations. CLCs Australia is an independent, non-profit organisation set up to support the community legal sector to provide high-quality free and accessible legal and related services to everyday people, especially people experiencing financial hardship, discrimination and/or some other form of disadvantage, or who are experiencing domestic or family violence. CLCs Australia's members are the eight state and territory community legal sector peak bodies. Together, they represent about 170 community legal centres, women's legal services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services operating in metropolitan, regional, rural, remote, and very remote communities across Australia.

All CLCs assist older persons, and some specialise in assisting older persons with rights-specific issues including elder abuse, financial exploitation, social protection including social security, aged/long-term care, and accommodation, decision-making and guardianship. Centres have formed an Older Persons Legal Services Network (OPLS) of CLCs Australia. Many CLCs are also experts in discrimination law.

CLCs Australia has engaged in working sessions of OEWGA since the 4th session. We refer to and rely upon our input on the substantive issue of the contribution of older persons to sustainable development submitted to the 12th Session of the Open-ended Working Group on Ageing.

#### National legal and policy framework

Australia is a constitutional federation of six states<sup>2</sup> and two self-governing territories.<sup>3</sup>

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<sup>1</sup> Formerly the National Association of Community Legal Centres.

<sup>2</sup> Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia.

<sup>3</sup> Australian Capital Territory and Northern Territory.

## Definition

*1. How are the key human rights relating to older persons' participation and, therefore, their contribution to sustainable development defined in the national legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional, and international legal frameworks?*

Australia remains in a minority of countries worldwide without a national human rights charter or statute.<sup>4</sup> Older Australians have no national constitutional or legislative guarantees for their contribution to sustainable development. Three of eight states/territories within Australia have human rights laws, and none guarantee older Australians' contribution to sustainable development.

We note the Declaration on the Right to Development Adopted by General Assembly declares that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.<sup>5</sup>

We also note the recently recognized human right to a clean, healthy and sustainable environment<sup>6</sup> specifically recognized that the impacts of environmental damage were felt more acutely by older persons.<sup>7</sup> The resolution recognized that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment.<sup>8</sup>

Further, we note the Declaration on the Rights of Indigenous Persons contains critical articles to sustainable development including the right of self-determination (art 3), the right, without discrimination, to the improvement of economic and social conditions (art 21), the rights and special needs of indigenous elders, women, youth, children and persons with disabilities (art 22), the right to the conservation and protection of the environment and the productive capacity of lands or territories and resources (art 29), the right to determine and develop priorities and strategies for the development or use of lands or territories and other resources (art 32), and the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements (art 37).

Additionally, we note the Declaration on the Rights of Peasants and Other People Working in Rural Areas contains critical articles to sustainable development.

In our view, the definition should be drawn from these contextual bases with attention given to older persons' specific rights needs within the three dimensions of sustainable development: economic, social and environmental.

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<sup>4</sup> <https://www.hrlc.org.au/charters-of-human-rights>

<sup>5</sup> Art 1.

<sup>6</sup> A/76/L.75; A/RES/76/300; A/HRC/RES/48/13.

<sup>7</sup> A/76/L.75, p.2.

<sup>8</sup> A/76/L.75, p.3.

## Scope of the rights

2. Please provide references to existing national legal standards relating to older persons' contribution to sustainable development on normative elements such as;

*a) right to equality and prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in the context of sustainable development;*

Federal discrimination laws include distinct statutes on employment, race, sex, disability, and age. Complaints that involve multiple areas of discrimination must be made separately under each statutory scheme. This differs from state/territory arrangements where single anti-discrimination statutes more easily facilitate intersectional complaints. All laws prohibit direct and indirect discrimination and apply to age generally. None of those laws address the context of sustainable development.

*b) elimination of all forms of ageism and age discrimination from sustainable development laws, frameworks, programs, policies, and practices;*

Australia has no national plan to combat ageism, including within the context of sustainable development. This is a nationally recognized gap that would be guided by a Convention on the Rights of Older Persons.

*c) right to freedom of expression, including freedom to seek, receive and impart information;*

Older Australians have no national explicit constitutional or legislative guarantees of the right to freedom of expression, including freedom to seek, receive and impart information. Three of eight states/territories within Australia have human rights laws that include the right to freedom of expression, including freedom to seek, receive and impart information.

*d) right of peaceful assembly;*

Older Australians have no national constitutional or legislative guarantees of the right of peaceful assembly. Three of eight states/territories within Australia have human rights laws that include the right of peaceful assembly.

*e) right to freedom of association;*

Older Australians have no national constitutional or legislative guarantees of the right to freedom of association. Three of eight states/territories within Australia have human rights laws that include the right to freedom of association.

*f) right to take part in the government of his country, directly or through freely chosen representatives;*

Older Australians have no national explicit constitutional or legislative guarantees of the right to take part in the government of the country, directly or through freely chosen representatives. Three of eight states/territories within Australia have human rights laws that include the right to take part in the government of their country, directly or through freely chosen representatives.

*g) right to development, including older persons as active participants and beneficiaries of development;*

Older Australians have no national constitutional or legislative guarantees of the right to development, including older persons as active participants and beneficiaries of development. Three of eight states/territories within Australia have human rights laws, though none explicitly address the right to development.

*h) active, free and meaningful participation of older persons and their representative organizations in all matters related to sustainable development, including in political processes;*

Older Australians have no national constitutional or legislative guarantees for their active, free and meaningful participation or of their representative organizations in all matters related to sustainable development, including in political processes. Three of eight states/territories within Australia have human rights laws, though none explicitly address the active, free and meaningful participation of older persons and their representative organizations in all matters related to sustainable development, including in political processes.

*i) access to prompt remedies and redress when older persons' above mentioned rights are violated.*

Remedies for denial of the right differ depending on national and state/territory arrangements and governing legislation.

## State obligations

*3. What measures and special considerations should be undertaken by the State to respect, protect and fulfil the above-mentioned rights to ensure older persons' contribution to sustainable development?*

Australia should develop and enact a national Human Rights Act or Charter.<sup>9</sup>

## Implementation

*4. What are the good practices and main challenges faced by your country in the adoption and implementation of the above-mentioned normative framework to ensure older persons' contribution to sustainable development?*

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<sup>9</sup> <https://www.hrlc.org.au/charters-of-human-rights>; <https://charterofrights.org.au/>